

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5857 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?No

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GOPALDAS M. RAJYAGURU, ..Pet.(s)

Versus

COMPETENT AUTH.& DY.COLLECTOR (ULC) ..Resp.(s)

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Appearance:

Shri J.R. NANAVATY, Advocate, for the Petitioner.

Shri A.G.URAIZEE, Assistant Government Pleader, for the  
Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 23/02/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot  
(respondent No.1 herein) on 29th June 1985 under section 21

(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 21st April 1988 in Appeal No.Rajkot-64 of 1984 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, respondent No.1 cancelled the permission granted under section 21 (1) of the Act by the order passed on 11th April 1980.

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round some three parcels of land bearing plots Nos.43-A, 50 and 62 from survey No.123/124 in all admeasuring 1061.24 square metres situated at Raiya within the urban agglomeration of Rajkot (the disputed lands for convenience). The petitioner applied for a permission under section 21 (1) of the Act with respect to the disputed lands. Such permission came to be granted by the order passed on 11th April 1980 on certain terms and conditions. Its copy together with the schedule appended thereto is at Annexure-A to this petition. One of the conditions required the petitioner to complete the construction work and to obtain the necessary completion certificate within five years from the date of the order at Annexure-A to this petition. The petitioner was therefore required to complete the construction work and to obtain the necessary completion certificate by 10th April 1985. It appears that the petitioner raised construction on the disputed lands only upto the plinth level by that time. Thereupon, a show cause notice came to be issued on 17th April 1985 under section 21 (2) of the Act calling upon the petitioner to show cause why the Scheme should not be cancelled. Its copy is at Annexure-B to this petition. Thereupon, the petitioner applied to the State Government on 24th June 1985 requesting extension of time for completion of the Scheme. Its copy is at Annexure-C to this petition. The petitioner also caused his reply on 25th June 1985 to the show cause notice at Annexure-B to this petition. A copy of the reply is at Annexure-D to this petition. Thereafter, by his order passed on 29th June 1985 under section 21 (2) of the Act, respondent No.1 cancelled the permission granted under section 21 (1) of the Act by the order at Annexure-A to this petition. A copy of the aforesaid order passed on 29th June 1985 is at Annexure-F to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under section 33 of the Act. A copy of the memo of appeal is at Annexure-G to this petition. It came to be registered as Appeal No.Rajkot-64 of 1985. By the order passed on 21st April 1988 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure-H to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 227 of the Constitution

of India for questioning the correctness of the order at Annexure-F to this petition as affirmed in appeal by the appellate order at Annexure-H to this petition.

3. It appears that the petitioner could not complete the construction work within the stipulated time-limit of five years on account of several reasons enumerated in his application at Annexure-C to this petition. Besides, it transpires from the order at Annexure-A to this petition, the petitioner was required to start construction work within one year from the date of the order at Annexure-A to this petition under intimation to respondent No.1. It appears that the petitioner could not start such construction work. Thereupon, a show cause notice came to be issued under section 21 (2) of the Act on 17th September 1981 calling upon the petitioner to show cause why the order at Annexure-A petition should not be cancelled. It appears that the aforesaid show cause notice issued on 17th September 1981 came to be withdrawn by the order passed by respondent No.1 on 13th December 1983. It is obvious that during the intervening period the petitioner could not have undertaken any construction activity. That intervening period was about two years and three months. It appears that the petitioner represented before respondent No.1 that he would be in a position to complete the Scheme within the stipulated period of five years and thereupon the show cause notice issued on 17th September 1981 came to be withdrawn by the order passed by respondent No.1 on 13th December 1983. Be that as it may, the fact remains that the petitioner could not complete the Scheme within the stipulated period of five years. The delay is however not on absolutely unjustifiable grounds.

4. In this connection, a reference deserves to be made to the ruling of this court in the case of GOVINDLAL CHUNILAL DALVADI v. STATE OF GUJARAT reported in 1994 (1) Gujarat Current Decisions at page 526. It has been held therein that such delay could be condoned by imposing some reasonable penalty.

5. The question that would arise is as to what penalty should be imposed on the petitioner. Under the order at Annexure-A to this petition, the petitioner is required to raise ten residential units for the weaker sections of the society in the disputed lands. The cost of each unit under the order at Annexure-A to this petition would work out at Rs.25000/= as rounded off. I think penalty at the rate of 10% per unit deserves to be imposed on the petitioner. 10% penalty per unit would come to Rs.2500/=. For ten units, it would come to Rs.25000/=. The delay in completion of the Scheme deserves to be condoned by imposing on the petitioner penalty in the sum of Rs.25000/= .

6. Since the petitioner has raised construction only upto the plinth level and since the petitioner could not undertake any further construction activity during the pendency of this petition, the petitioner deserves to be directed to complete the construction work within two years from today. No extension of time will now be granted.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot on 29th June 1985 under section 21 (2) of the Act at Annexure-F to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 21st April 1988 in Appeal No.Rajkot-64 of 1985 at Annexure-H to this petition is quashed and set aside on condition of payment of the penalty amount of Rs.25000/= by the petitioner within one month from today by means of an account payee cheque drawn in favour of respondent No.1. The petitioner is directed to complete the construction work within two years from today. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

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